

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AMAURY ROSARIO,	:	
Petitioner	:	
vs.	:	CIVIL NO. 1:CV-10-0204
	:	
RONNIE R. HOLT, Warden	:	
Respondent	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are addressing a Report and Recommendation from Magistrate Judge Blewitt recommending we dismiss Amaury Rosario's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, which challenges his convictions for murder, robbery, conspiracy to commit robbery and use of a firearm in relation to crimes of violence. The magistrate judge recommends that we dismiss the petition for lack of subject matter jurisdiction. Petitioner objected to the report, styled as a response motion to the respondent (doc. 7), claiming that we have jurisdiction because his remedy under 28 U.S.C. § 2255 is inadequate and ineffective, and he is actually innocent of the crimes. Since objections were filed, the Court must "make a *de novo* determination of those portions of the report or specified proposed finding or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(c).

After review of the record, we agree with the Magistrate Judge's determination concerning the issues raised by the Petitioner. Indeed, the Magistrate Judge's report thoughtfully and thoroughly addressed the adequacy of 28 U.S.C. § 2255

and Petitioner's claim of actual innocence. We see no reason for further comment since our reasoning follows that of the Magistrate Judge.

ACCORDINGLY, this 30th day of March, 2010, upon consideration of the report and recommendation of the magistrate judge (doc. 6), and the objections filed thereto (doc. 7), and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted.
2. Petitioner's objections are overruled.
3. Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is dismissed for lack of subject matter jurisdiction.
4. Petitioner's motion (doc. 8) to file an amended petition is denied.
5. The Clerk of Court shall close this file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge